ENDLESS REALTY SDN BHD

v.

JAIKISHAN REWACHAND

HIGH COURT MALAYA, KUALA LUMPUR
NIK HASHIM J
[ORIGINATING SUMMONS NO: S7-24-2459-99]
31 JANUARY 2001

CIVIL PROCEDURE: *Jurisdiction - Agreement conferring jurisdiction on Magistrate's Court - Plaintiff withdrawing claim in Magistrate's Court and filing afresh in High Court - Whether plaintiff still bound by agreement conferring jurisdiction on Magistrate's Court - Whether plaintiff could only file afresh in Magistrate's Court - Estoppel - Abuse of process of court - Subordinate Courts Act 1948, ss. 65(3), 93(1)*

In 1995 the plaintiff commenced an action against the defendant in the Magistrate's Court at Kuala Lumpur, *vide* Summons No: 72-672-1995 ('the first summons'), claiming *inter alia*, an order that the defendant do deliver up vacant possession of certain premises ('the premises') to the plaintiff. There was also a claim for double rentals until delivery of vacant possession. The defendant counter claimed for damages to be assessed by the court.

By a certificate ('the certificate'), pursuant to s. 65(3) of the Subordinate Court's Act 1948 ('the Act'), the plaintiff and the defendant agreed that the Magistrate's Court shall have jurisdiction to try the claim and the counterclaim and to make such order, judgment or award as it deemed fit.

In October 1999 the plaintiff withdrew the first summons, and an order was made by the magistrate striking out the summons with liberty to file afresh. There was no order made in regard to the defendant's counterclaim.

By the present originating summons ('the present summons') herein filed in December 1999, the plaintiff sought, *inter alia*, the same reliefs against the defendant as was sought in the first summons.

The defendant, pursuant to O. 33 of the Rules of the High Court 1980 ('RHC'), applied to the High Court to determine as a preliminary issue of law whether, given the certificate to which the plaintiff and the defendant had agreed, the High Court had the jurisdiction to adjudicate the present originating summons.

Held:

[1] The certificate was a statutory agreement, as between the plaintiff and the defendant, whereby the plaintiff had agreed to the claim and the counterclaim being tried by the Magistrate's Court. Accordingly, the plaintiff and the defendant were bound by the agreement in the certificate, conferring jurisdiction to try the claim and the counterclaim upon the Magistrate's Court at Kuala Lumpur.

[2] The defendant's counterclaim was a separate and independent action, and not having been withdrawn, it continued to subsist.

[3] The order to strike out the first summons with liberty to file afresh must, in the light of the certificate, mean that a fresh action to be filed could only be filed in the Magistrate's Court. Having regard to the agreement in the certificate, it would be inequitable to allow the plaintiff to file a fresh action in any court other than the Magistrate's Court.

[4] Given the certificate, and the fact that it continued to subsist, notwithstanding the withdrawal of the first summons, the plaintiff, as a party to the certificate, continued to be bound by the agreement as per the certificate on the application of the doctrine of estoppel.

[5] It would be contrary to public policy, and an abuse of the process of the High Court, to permit the plaintiff's action in the High Court to be prosecuted. The High Court was empowered to order the present summons to be dismissed under its inherent jurisdiction.

[Originating Summons No: S7-24-2459-99 struck out.]

Case(s) referred to:

Amalgamated Investment and Property Co Ltd (In liquidation) v. Texas Commerce International Bank Ltd [1982] 1 QB 84 ***(refd)***

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 ***(refd)***

Daewoo Corp v. Bauer (M) Sdn Bhd (No 2) [1999] 7 CLJ 23 ***(refd)***

Kapt (B) Mohamad Ismail v. Perwira Affin Bank Bhd [1999] 4 CLJ 199 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 33 r. 5

Subordinate Courts Act 1948, ss. 65(3), (4), 93(1)

For the plaintiff - YT Ling (MS Wong with him); M/s Lee, Ling & Partners

For the defendant - Sri Dev Nair; M/s Anad & Noraini

Reported by Kanchana Chandran

JUDGMENT

Nik Hashim J:

This is an application pursuant to O. 33 of the Rules of the High Court 1980 (RHC) by the defendant *vide* encl. 12 for this court to determine a preliminary issue of law:

Whether this court has the jurisdiction to adjudicate the plaintiff's originating summons in encl. 1 considering that:

(a) the plaintiff had previously filed an action premised on a similar cause of action in the Magistrate's Court *vide* Summons No. 72-672-95 claiming for orders for the defendant to deliver up vacant possession of the premises in question, double rentals, interest and the alternative prayer that the defendant is responsible to pay all arrears of rentals from 1 December 1994 until the date of delivery of vacant possession, and

(b) the plaintiff and the defendant had agreed and secured a certificate under s. 65(3) of the Subordinate Courts Act 1948 (the Act) which gives the Magistrate's Court power to hear the plaintiff's claim as well as the defendant's counter-claim even though the claims of both the parties exceed RM25,000.

Before answering the question it is pertinent to note that on 20 October 1999 the plaintiff withdrew the action in the Magistrate's Court and thereafter on 10 December 1999 it filed the originating summons in encl. 1 in the High Court over the same cause of action. The striking out order of the Magistrate's Court reads as follows:

DALAM MAHKAMAH MAJISTRET DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN, MALAYSIA
SAMAN NO. 72-672-95

Antara

Endless Realty Sdn Bhd ... Plaintif

Dan

Jaikishan s/o Rewachand ... Defendan

DI HADAPAN PUAN ROSZIANAYATI BT. AHMAD
MAJISTRET, MAHKAMAH MAJISTRET, KUALA LUMPUR
PADA 20 HARIBULAN OKTOBER, 1999.
DALAM MAHKAMAH TERBUKA

PERINTAH

ATAS PERMOHONAN plaintif dan SETELAH MEMBACA Notis Menarik Balik yang bertarikh 8hb Julai 1999 DAN SETELAH MENDENGAR Cik MS Wong yang menyebut bagi pihak peguamcara Plaintif dan Cik Sumita,

Peguamcara bagi pihak Defendan, MAKA ADALAH PADA HARI INI DIPERINTAHKAN BAHAWA tindakan ini dibatalkan dengan kebebasan untuk memfailkan semula dan kos kepada Defendan.

Bertarikh pada 20 haribulan Oktober 1999.

Sd
Pendaftar
Mahkamah Rendah
Kuala Lumpur

Whereas the certificate signed by both the plaintiff and the defendant giving the Magistrate's Court power to hear the plaintiff's action and the defendant's counter-claim is as follows:

In the Magistrate's Court at Kuala Lumpur
In the State of Wilayah Persekutuan, Malaysia
(Summons No. 72-672-95)

Endless Realty Sdn Bhd ... Plaintiff

Jaikishan sb Rewachand ... Defendant

Certificate Pursuant To Section 65(3) of the Subordinate Courts Act 1948 (Act 92)

We the undersigned, hereby agree that the Magistrate's Court of Kuala Lumpur shall have jurisdiction to try the plaintiff's action or suit and for the defendant's counter-claim herein mentioned pursuant to section 65(3) of the Subordinate Courts Act 1948 (Act 92) and to make such order or judgment or award deem fit.

Dated this 3rd day of May 1996.

(Sd)
Solicitors for the
Plaintiff

(Sd)
Solicitors for the
Defendant

Contentions Of The Parties

Learned counsel for the defendant, Encik Sri Dev Nair, contended that even though the plaintiff had withdrawn the action in the Magistrate's Court, the defendant's counter-claim is still pending before the Magistrate's Court and because the parties had through the certificate submitted to the jurisdiction of the Magistrate's Court, the plaintiff could only file the action afresh in the Magistrate's Court and was therefore estopped from resiling from the terms of the certificate.

Encik Y.T. Ling, learned counsel for the plaintiff, on the other hand, submitted amongst other things, that this court has the jurisdiction to try the plaintiff's originating summons in encl. 1 on the ground that the Magistrate's Court order

dated 20 October 1999 was not limited to be filed only in the Magistrate's Court. He argued that since the action was struck out, it was no more in existence, and the plaintiff was thus free to file its claim in which court it chose.

Findings Of The Court

With respect, I do not agree with Encik Y.T. Ling. In this case, there is much merit in Encik Sri Dev Nair's submissions.

The certificate binds the parties. This certificate is a statutory agreement made by the plaintiff and the defendant under s. 65(3) read together with s. 93(1) of the Act. It states very clearly that the plaintiff and the defendant have entered into an agreement in writing that the Magistrate's Court of Kuala Lumpur shall have jurisdiction to try the plaintiff's action and the defendant's counter-claim in respect of summons case number 72-672-95. By the certificate, which was filed in the Magistrate's Court, the plaintiff had in fact represented that he was agreeable to be bound by the certificate. Moreover, the defendant's counter-claim, which is a separate and independent action of the plaintiff's action, has not been withdrawn. Therefore, pursuant to s. 65(4) of the Act, the plaintiff and the defendant being the parties to the certificate shall be subject to the jurisdiction of the Magistrate's Court, and they are accordingly bound by the agreement in the certificate.

Thus, in the present case, the order of striking out the action "dengan kebebasan untuk memfailkan semula" (with liberty to file afresh) in the light of the certificate would only give rise to just one and only meaning that the fresh action could be filed again only in the Magistrate's Court, Kuala Lumpur, as the magistrate has the power to make such an order only in that form. It does not make sense to interpret the striking out order to mean otherwise. Whilst it is true that the action was no more in existence as it was earlier struck out, the plaintiff was nevertheless bound by the certificate, and as such, by the clear terms of the certificate, the plaintiff could not file the action in any court it pleased. It could only file the action in the court which was agreed upon in the certificate, ie, the Magistrate's Court, Kuala Lumpur.

Doctrine Of Estoppel

In my judgment, it would be totally unjust to allow the plaintiff to insist on the interpretation of the striking out order 'with liberty to file afresh' to mean 'with liberty to file afresh not limited to be filed only in the Magistrate's Court' as suggested by the learned counsel for the plaintiff when it would be inequitable to do so, having regard to the agreement in the certificate limiting the plaintiff's action and the defendant's counter-claim in the Magistrate's Court. Hitherto, the parties have not withdrawn or set aside the certificate that they had duly signed. In the result, by this statutory certificate, the plaintiff is estopped from resiling from the terms of the agreement. The doctrine of

estoppel operates to bind parties as to the meaning or legal effect of a document which they have settled upon (see *Amalgamated Investment and Property Co Ltd (In liquidation) v. Texas Commerce International Bank Ltd* [1982] 1 QB 84; [1981] 3 All ER 577; [1981] 3 WLR 565, which was followed by the Federal Court in *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283).

In the case of *Kapt (B) Mohamad Ismail v. Perwira Affin Bank Bhd* [1999] 4 CLJ 199, the defendant bank had promised the plaintiff individual that they will revoke the bankruptcy adjudicating and receiving orders in consideration the plaintiff pay a sum of RM60,000 in full and final settlement. However, an advertisement appeared in the newspapers advertising the plaintiff's bankruptcy action. The issue that the court had to decide was whether the defendant had an obligation to revoke the said bankruptcy orders. It was held in that case that the defendant, by the doctrine of estoppel, was estopped from resiling from its promise and that there was no evidence that the defendant had any time withdrew this promise.

Similarly, the said doctrine equally applies in the present case.

Abuse Of The Court's Process

Further, it is contrary to public policy and abuse of this court's process for this action to be prosecuted in the High Court in respect of expecting an award exceeding RM250,000 when from the outset in the Magistrate's Court, both the parties had agreed to be bound by the award according to the Magistrate's Court jurisdiction irrespective of the telling fact that the amount, at the time of the certificate was secured, had already exceeded the jurisdictional amount in the Magistrate's Court of RM25,000. Furthermore, the case has been pending since 1995. To allow this case to proceed in the High Court would undoubtedly prejudice the defendant who is an individual who will have to defend a larger claim. Indeed, it is the inherent jurisdiction of this court to deal with an abuse. Once an abuse of process is established, the court is empowered to dismiss the action (see *Daewoo Corp v. Bauer (M) Sdn Bhd (No 2)* [1999] 7 CLJ Supp 23).

Conclusion

Since the parties had clearly through the certificate, submitted to the jurisdiction of the Magistrate's Court, Kuala Lumpur, I hold that this court has no jurisdiction to adjudicate the plaintiff's action. Accordingly, the plaintiff is advised to comply with the certificate it had signed. The plaintiff's originating summons in encl. 1 is obviously a flagrant abuse of the process of the court and as such, I, by virtue of O. 33 r. 5 of the RHC, order that encl. 1 be struck out with costs to the defendant.